THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.23841 of 1995

Dt.19-12-2006

Between:

M/s. Venkateswara Mining Company rep.by its
Manager, V.Kesava Rao

..Petitioner

and

1.Govt. of A.P. rep.by its Secretary,
Industries & Commerce Department.,
Secretariat, Hyderabad.

..Respondents.

-

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.23841 of 1995

Oral Order:

In this writ petition filed under Article 226 of the Constitution petitioner questions the demand notice issued by the Assistant Director of Mines and Geology—3rd respondent dated 22-06-1994 for restraining him from collecting the amounts covered by the demand notice.

According to the petitioner, this Court in ***K.C.P.LTD. v. GOVT. OF A.P.***[1] was placed to hold that A.P.Mineral Rights Tax Act is ultravires and in ***M/S.NAGARJUNA CEMENTS LTD. v. ASST.DIRECTOR OF MINES & GEOLOGY***[2] this Court was pleased to hold that the State Legislature has no jurisdiction to levy cess on royalty under A.P. (Telangana Area) District Boards Act. The petitioner has paid the Cess and Mineral Rights Tax upto April, 1991 and it has no dues to the State Government. In view of the Central Ordinance 7 of 1992, which replaces by Act 16/1992, interest claimed on the Mineral Rights Tax and Cess in view of Validation Act, which the petitioner is not liable to pay. Any interest charged on the Mineral Rights Tax and the Cess is arbitrary and illegal. Therefore, the impugned demand notice, which includes interest, cannot be enforced.

The 3rd respondent filed a counter stating that this Court in W.P.No.2085 of 1987 dated 03-11-1989 held that interest should not

be levied on Mineral Rights Tax and Cess, which can be levied on royalty. Keeping in view the High Court's order the State Government issued instructions through Memo No.4011/M1(1)/89-14 dated 25-07-1991 directing the subordinate officers not to levy interest on Mineral Rights Tax and Cess. As per the assessment made by the department, interest has been levied only on royalty from 01-04-1983 and the lessee company was in arrears of royalty as on 31-03-1994 Rs.41,960/- subsequently interest has been accrued from time to time and finally it has been calculated to a tune of Rs.79,913.60ps. After the Validation Act of 1992 the assessment has been revised for the period ending 04-04-1991 while levying Mineral Rights Tax and Cess. The Mineral Rights Tax and Cess payable by the petitioner-Company is Rs.8,71,138.30ps. towards Mineral Rights Tax and Rs.2,06,646.75 ps. towards Cess and the said amount has not been remitted by the petitioner—Company. The interest had been worked out at the rate of 15% upto the date of amendment and again at the rate of 24% as per Rule 64A, and if the interest at 24% is calculated since 1983 i.e. the date of due, if would have been more than 2 lakhs per annum, whereas demand is raised for Rs.79,913.50 ps. towards interest which clearly shows while calculating interest arrears and cess have not been taken into account.

Learned counsel for the petitioner contends that after 04-04-1991 they are not liable to pay any interest but the demand notice shows that interest was also calculated for the year 1993-94. Hence department cannot collect interest after 04-04-1991.

Whereas the learned Government Pleader for Industries contends that interest is calculated upto 04-04-1991 as already been explained in the counter. He further contends that the petitioner in its letter dated 19-06-1995 requested for grant of instalments to clear the

Mineral Rights Tax instead of granting lease held by it and the same was granted by the Director of Mines and Geology in his proceedings dated 01-11-1995 which is appended to the counter.

Having regard to the fact that the petitioner is not denying about its liability to pay the interest on royalty when the amount fell due till 04-04-1991, department can issue a revised demand notice showing how the said amount has been arrived at within four weeks from the date of receipt of a copy of this order and on issuing the said revised demand notice petitioner has to pay the same.

The writ petition is accordingly disposed of. No costs.

_____

A.GOPAL REDDY, J.

19-12-2006

Murthy

---

[1] 1990 (2) APLJ 446

[2] 1990 (1) APLJ 259